

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSEPHINE ODLE)	
Claimant)	
VS.)	
)	Docket No. 206,313
CRAMER, INC.)	
Respondent)	
AND)	
)	
INSURANCE COMPANY OF NORTH AMERICA)	
Insurance Carrier)	

ORDER

Claimant, respondent, and its insurance carrier appealed the Award entered August 20, 1997 by Administrative Law Judge Robert H. Foerschler. The Appeals Board heard oral argument on January 20, 1998.

APPEARANCES

James E. Martin of Overland Park, Kansas, appeared for the claimant. Michael W. Downing of Kansas City, Missouri, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ awarded claimant a 50 percent work disability based upon an average of a 100 percent wage loss and a 0 percent task loss. Although there was physician testimony that claimant was unable to return to any of the jobs she had performed in the 15-year period before her accident date, there was no testimony in the opinion of a physician as to what work tasks claimant had lost the ability to perform as a result of her work-related injury. Claimant appealed the ALJ's finding concerning the nature and extent of her disability. Respondent raised issues concerning notice, nature and extent of disability, and a reduction in claimant's disability benefits by the amount of her social security retirement and/or employer provided pension benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the ALJ should be modified as to the nature and extent of claimant's disability and to provide for an offset in the amount of her retirement benefits against her weekly disability compensation.

The facts in this case are well set out in the Award by the ALJ. It is not necessary to repeat those here. The Appeals Board agrees with the findings of fact and conclusions of law enumerated in the Award with respect to the finding that claimant met with personal injury by accident arising out of and in the course of her employment by a series ending on her last day of work for respondent. The Appeals Board agrees claimant established just cause for any failure to give notice within 10 days and that notice of accidental injury was given within 75 days of her accident date. As to the nature and extent of claimant's disability, based upon the testimony of vocational expert Michael Dreiling, the Appeals Board finds that claimant is realistically unemployable and entitled to a permanent total disability award. See Wardlow v. ANR Freight Systems, 19 Kan. App. 2d 110, 872 P.2d 299 (1993).

The ALJ did not address the issue concerning any offset against the workers compensation disability award due to claimant's pension and/or social security retirement benefits. This is understandable when the parties fail to mention this issue at regular hearing and in their submission letters to the ALJ. K.S.A. 44-501(h) provides for such an offset when the claimant is receiving retirement benefits under the federal social security act and/or where a plan is provided by the employer. Claimant testified that she began drawing social security retirement benefits when she turned 62 years of age on March 14, 1996, at the rate of \$842 per month. This equates to a weekly benefit of \$194.31. Claimant's weekly permanent disability compensation should be reduced by this amount beginning with the week the social security benefits commenced.

Respondent is also entitled to a reduction for the retirement benefits it provided claimant. Respondent's human resources coordinator, Linda Collins, testified that the pension was totally provided by respondent. There is no evidence to the contrary. Thus, the record establishes that all of the \$7,700 retirement benefit claimant rolled over into an IRA was attributable to payments or contributions made by the employer. The maximum number of weeks of permanent total disability benefits that can be awarded is 383.44. This is determined by dividing the weekly compensation rate of \$326 into the \$125,000 maximum compensation benefit for a permanent total disability award. Dividing 383.44 into \$7,700 results in a weekly credit of \$20.08. This is the amount by which all weekly compensation benefits will be reduced for the employer provided pension benefits.

The Appeals Board otherwise agrees with the analysis of the record by the ALJ and adopts his findings and conclusions as its own as if specifically set forth in this Order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated August 20, 1997, entered by Administrative Law Judge Robert H. Foerschler, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Josephine Odle, and against the respondent, Cramer, Inc., and its insurance carrier, Insurance Company of North America, for an accidental injury which occurred August 22, 1995, and based upon an average weekly wage of \$505.21 for 28.14 weeks at the rate of \$326 less \$20.08 or \$305.92 per week or \$8,608.59, followed by 355.30 weeks at the rate of \$111.61 per week or \$39,655.03, for a permanent total disability, making a total award of \$48,263.62 (which is \$125,000 less the appropriate retirement benefits credit).

As of November 1, 1998 there is due and owing claimant 28.14 weeks at the rate of \$305.92 per week or \$8,608.59, followed by 138.57 weeks of permanent total compensation at the rate of \$111.61 per week in the sum of \$15,465.80 for a total of \$24,074.39, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$24,189.23 is to be paid for 216.73 weeks at the rate of \$111.61 per week, until fully paid or further order of the Director.

The Appeals Board hereby adopts the remaining orders set forth in the Award to the extent that they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Overland Park, KS
Michael W. Downing, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director